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File No. 0. Medical Council/51

Legal Deptt

A **BRANCH**

Subject:— Opinions under the Indian Medical Council Act, 1933.

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The first question raised by the Returning Officer for election of a member ~~x~~ to the Medical Council of India is whether, reading sub-rule (3) of rule 10 with rule 11 of the rules for the holding of the election of members to the Medical Council of India, it would be correct to presume that virtually the words "get his signature attested by a Gazetted Officer of Government or J.P." can be ignored by the Returning Officer for purposes of scrutiny of covers under rule 11. Rule 10(3) of the rules for the holding of election of members to the Medical Council of India provides:

> "The voter shall enclose the voting paper duly filled in, but without the name or the signature of the voter, in the small cover and enclose this again in the bigger cover, enter his name and signature on the bigger cover, get his signature attested by a gazetted officer of Government or a Justice of the Peace, and send it to the Returning Officer ~~x~~ so as to reach him before the last date and hour appointed under clause (c) of rule 3 for receipt of voting papers."

Rule 11 provides:

> "After satisfying himself that the electors have entered their names and signatures on the bigger covers, the Returning Officer shall open the bigger covers before the date and hour appointed under clause (d) of rule 3 for the counting of votes and place them in safe custody pending disposal under rule 14."

Reading those provisions together, it is apparent that the Returning Officer has to satisfy himself that the electors have entered their names and signatures on the bigger covers

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which satisfaction would apparently be based on the attestations made to the signatures of the voters by a Gazetted Officer of Government or a J.P. It is true that rule 11 does not say that the Returning Officer has also to satisfy himself that the attestation made by a Gazetted Officer of Government or a J.P. is genuine. But it is to be presumed that the attestation made by such officer or J.P. is genuine, unless there are cogent reasons to suspect it, in which case the Returning Officer has to get it verified by writing to the Officer or J.P. so attesting the signature. Consequently, the presumption made by the Returning Officer that the words "get his signature attested by a Gazetted Officer of Government or a J.P." in rule 10(3) can be ignored by the Returning Officer is not correct.

The second question raised by the Returning Officer is whether the intention of rule 11 is that with a view to minimise the work on the day of counting of votes the Returning Officer should open the covers as they are received, separate the voting papers from the bigger covers and keep them in separate lots in safe custody. Rule 11 provides:

> "After satisfying himself that the electors have entered their names and signatures on the bigger covers, the Returning Officer shall open the bigger covers before the date and hour appointed clause (d) of rule 3 for the counting of votes and place them in safe custody pending disposal under rule 14."

The intention of this rule x is to maintain the secrecy of voting by ballot. The intention

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of the rule as presumed by the Returning Officer that the bigger covers are to be opdned before the date and hour appointed under clause (d) of rule 3 x for the counting of votes and placing the voting papers in safe custody before disposal under rule ~~xx~~ 14 is to ~~xxx~~ minimise the work on the date of counting of votes is not correct. If the bigger covers are opened at the time of counting of votes, the screcy of ~~x~~ voting by ballot would be violated. It is for this reason that the bigger covers are to be opened and the voting papers are to be placed in safe custody before the date and hour appointed under clause (d) of rule 3 ~~x~~ for counting of votes.

Sd. J.R.Dhurandhar
3/12.
Remembrancer of Legal Affairs.

U.R.to L.S.G.~~xxx~~ & P.H.D.No.1023-Confl.,dated 10th Dec.1951.

MRP.
26/6/56.